Calendar No. 1084

99TH CONGRESS
2d Session

SENATE

REPORT
99-528

SETTLING INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MASSACHUSETTS, AND FOR OTHER PURPOSES

OCTOBER 3 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

---

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1452]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1452) to settle Indian land claims in the town of Gay Head, Massachusetts, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 3, line 4, delete "$3,000,000" and insert in lieu thereof "$1,500,000".

2. On page 3, after line 5, insert the following new subsection:

> (c) STATE CONTRIBUTION REQUIRED.—Amounts may be expended from the fund only upon deposit by the State of Massachusetts into the fund of an amount equal to that amount to be expended by the United States so that both the United States and the State of Massachusetts bear one half of the cost.

3. On page 4, line 6, before the word "any", insert the word "or".

4. On page 5, line 15, delete the words "Wampanoag Tribal Council" and insert in lieu thereof the phrase "Secretary to be held in trust for the Gay Head Indians".

5. On page 5, line 23, before the word "shall" insert the phrase "or the tribal governing body referred to in section 6(d) of this Act,".

6. On page 6, line 8, delete the words "Wampanoag Tribal Council" and insert the phrase "Secretary in trust for the Gay Head Indians".

91-010 O

S413-13

7. On page 7, line 19, beginning with the word "shall" delete all through the period on line 22 and insert in lieu thereof the following: "and the title to public settlement lands conveyed by the Town of Gay Head shall be held in trust for the Gay Head Indians and is subject to this Act, the Settlement Agreement, and other applicable laws. The Secretary, by regulation, shall provide for an interim governing body for administration of the settlement lands on behalf of the Gay Head Indians until a tribal governing body is established and recognized by the Secretary."

8. On page 9, line 16, delete "(b)" and insert in lieu thereof "(c)".

9. Beginning on page 10, line 16 through page 11, line 9, delete section 8 and renumber the subsequent sections accordingly.

10. On page 14, line 7, after the word "the" delete all through the period on line 8 and insert in lieu thereof the following: "the entity recognized by the Secretary as representing the Gay Head Indians."

11. On page 15, (redesignated section 11) beginning on line 2, strike all through the period on line 7 and insert in lieu thereof the following: "This act (except section 4) shall take effect on publication in the Federal Register within one year of enactment of this act of a notice of the Secretary's acknowledgment under Part 83 of title 25, Code of Federal Regulations, that the Gay Head Indians exist as an Indian tribe. Section 4 shall take effect on the later of the foregoing date or on transfer of title to the settlement lands to the Secretary of the Interior to be held in trust for the Gay Head Indians or the tribe organized by those individuals who the Secretary of the Interior determines are Gay Head Indian descendants: Provided that, initial and future membership in the tribe shall be limited to Gay Head Indian descendants."

PURPOSE

The purpose of the bill is to implement a negotiated settlement of litigation that was brought in federal court by the Wampanoag Tribe of Gay Head Indians claiming aboriginal title to lands within what is now the Town of Gay Head, Massachusetts.

BACKGROUND

Historical summary

The Town of Gay Head is located on the western-most portion of the island of Martha's Vineyard and encompasses approximately 3,400 acres. The Gay Head Wampanoag Indians have continuously inhabited the area that is now Gay Head for at least the last 350 years, having their first contact with Europeans in 1602 when the village was visited by early explorers. They were an Algonquian speaking people with cultural traditions similar to other southern New England Indians who are commonly designated as Wampanoag. Wamponoags were farmers, hunters and fishermen who planted corn, squash and tobacco using rotation methods, trapped deer, small mammals, and wild fowl, and gathered shellfish.

Living in villages of 10 to 20 wigwams each, the Indians followed the seasons, being near the shore in spring, harvesting crops in the fall and living in the inland woods in the winter. Multi-village alli-

ances were loose and the "tribal" unit was synonymous with the village. The Gay Head Indian community was one of four principal villages on Martha's Vineyard. Although there were commonalities, each community acted independently of the other.

In 1641, Thomas Mayhew gained title to Martha's Vineyard but the grant did not extend to the area occupied by the Gay Head Indians. In 1662, William Brenton supposedly purchased Gay Head from the chief of the tribe but never attempted to settle his grant. The status of the island was resolved in 1691 when Massachusetts incorporated it into the colony, leaving the Indians basically free from external political control. The Gay Head Indians always opposed transfers or sales of land and numerous allegations of leasing fraud were investigated by committees appointed by the colony.

In 1746, the legislature appointed guardians or overseers for the tribe with power to allot and lease lands and to use rents and other income for the care of the sick or elderly. In a vigorous and persistent manner, the tribe actively petitioned the legislature for redress of grievances throughout the 18th Century. The overseer system continued into the 19th Century as did tribal objections to misuse of their lands and monies. During this period, the state provided assistance for a windmill, a school, and care of the sick and indigent. An act passed in 1869 granted citizenship to Massachusetts Indians and guaranteed title to certain parcels of land claimed by individual Indians. The next year, 1870, another act incorporated the Indian District as a town (Gay Head) and provided that all common lands, common funds, and all fishing and other rights by the district of Gay Head were transferred to the town of Gay Head. As far as the Indians were concerned, the change to a town made no difference in the practice of their tribal government or the management of their cultural and financial affairs.

Over the years, some lands were sold to non-Indians by the Indian "proprietors" who owned or inherited "allotments," much the same as allotments go out of Indian ownership on western reservations. The town remained socially and politically under Indian control and the town and tribe were viewed as one entity; even non-Indian spouses could not vote on tribal matters. After World War II, travel "down-island" became increasingly easy and phones and electricity were installed as well. The subsistence strategies that had served the Indians very well up to then were no longer adequate to support a cash economy. Tourism and the attendant support services became the major post-World War II industry. As a result, many more non-Indians became year-round Gay Head residents, leading to concern that town control would go out of Indian leadership.

The claim and the settlement

The tribe claims that the 1870 act which purportedly terminated the Indian title and transferred the "common lands" to the town of Gay Head was a violation of the 1790 Non-Intercourse Act which prohibits extinguishment of Indian title without federal approval. A lawsuit filed in 1974 by the tribe prompted a long series of negotiations among the parties (the Town of Gay Head, the Gay Head Taxpayers Association, the Wampanoag Tribe of Gay Head and the State of Massachusetts). The settlement, reached in the fall of 1983,

was accepted by the Taxpayers Association unanimously, by the Tribe on a 164 to 29 vote, and by the Town on a vote of 92 to 13. The state signed the agreement on November 22, 1983.

The settlement provides for a transfer of title to the town common lands in exchange for extinguishment of all claims by the tribe to any lands within the town of Gay Head. The necessary legislation providing authority for the Town to transfer the common lands passed the state legislature in August 1985. The settlement now requires federal approval and its terms are embodied in S. 1452.

The settlement lands consist of the Town common lands (about 283 acres), the "Cook Land" (7.2 acres which is suitable for economic development), the "Strock Estate" (201 acres of private lands for which a purchase option is in effect) and 11 other acres in private ownership for which no sales agreement has been obtained. A Land Use Plan will restrict the uses to which the lands can be put and the Town will retain the beach areas and control of access to beach areas. Funds will be required to purchase the Strock Estate (from $2 to $3 million) and the state has agreed to contribute up to $1.5 million as its 50 percent contribution for that purpose. Additionally, the land contributed by the State (the common lands) has an appraised value of over $2 million.

The Committee believes that the terms embodied in the settlement and implemented in S. 1452 are fair to all concerned and in the best interests of the Wampanoag Gay Head Indian tribe.

Dissident faction

A dissident faction of the tribe claims that the amount of land is inadequate and the jurisdictional limits on the lands are too restrictive. Two tribal votes have been taken and a clear majority has supported the agreement. Although the dissidents have filed numerous lawsuits to block the settlement, their efforts have been totally unsuccessful. The leaders of this faction claim to represent up to one-half of the tribe but have failed to substantiate this claim despite ample opportunity to do so.

Administration position

The Administration testified at the April 9 hearing in opposition to the bill primarily because the recognition process was not complete. Since the hearing, the BIA has made an initial determination that the Tribe met only five of the seven criteria for recognition. The Tribe appealed the decision and reconsideration is ongoing. Since there is no way to forecast the outcome of the appeal, and time is critical to the progress of the settlement if the appeal is successful, the Committee recommends passage of the bill with an amendment requiring that the provisions of the Act will only take effect if the recognition petition is approved.

In addition, the Department of the Interior wanted a larger state contribution to the settlement. The state recently enacted legislation to make $1.5 million available for the purchase of lands; this is in addition to the common lands transferred by the Town that are valued at $2 million but for which sale and use are restricted. The net result is that the $3 million proposed in the bill as the federal

contribution to the settlement is cut by one-half to $1.5 million and a Committee amendment reflects this change.

In direct contradiction to its testimony before both the House and the Senate, the Administration continues to oppose the bill even with the changes making the measure contingent on recognition and reducing the federal contribution by 50 percent. The Committee notes the inconsistent position taken by the Administration on this bill but is relying on the testimony received at the hearing in making its recommendation to the Senate to pass the bill.

LEGISLATIVE HISTORY

In the 98th Congress, Representative Studds introduced the Gay Head Settlement bill, H.R. 5491, and Senator Kennedy introduced an identical bill in the Senate. Hearings were held in the House on June 7, 1984 but no further action was taken on the bill in the 98th Congress.

In the 99th Congress, S. 1452 was introduced on July 17, 1985 by Senators Kennedy and Kerry and Congressman Studds and others introduced an identical bill, H.R. 2868, on June 25, 1985. The Senate Select Committee on Indian Affairs held a hearing on April 9, 1986 and the House Interior Committee held a hearing on June 26, 1986. The House Committee ordered H.R. 2868 reported with amendments on September 17, 1986.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Select Committee on Indian Affairs, by a poll of its members showing a vote of 6 in favor and 3 opposed, recommends that the Senate pass S. 1452 as amended. The amendments appear on page 1 of this report and are explained below.

EXPLANATION OF AMENDMENT TO S. 1452

Reduction of federal contribution from $3 million to $1.5 million

The State of Massachusetts has included a provision in its FY 1987 budget which sets aside $1.5 million dollars to be used as a 50 percent contribution to the cost of the settlement lands. This money, when added to the $1.5 million proposed by the amendment to S. 1452, will provide sufficient funds to allow the tribe to acquire the settlement lands included in the legislation. The state contribution is contingent upon enactment of S. 1452.

Settlement contingent on success of recognition efforts

Section 11 (as renumbered) of S. 1452 provides for the effective date of the legislation. There are two separate dates on which the bill would become effective. The first involves Section 4 where the tribe's claim to Gay Head town lands will be extinguished. Extinguishment will not occur until the tribe receives title to all of the settlement lands.

The second date concerns all other sections of the bill. The proposed amendment makes the bill contingent on a final positive determination that the Wampanoag Indians of Gay Head are a tribe. The tribe passed five of the seven requirements but there was insufficient evidence concerning their "contemporary community" and

the continunity of their tribal leadership. The tribe has until October 28, 1986, to supply additional documentation to refute the negative findings and the BIA then has 60 days to make a final determination. The amendment will make S. 1452 effective only upon a positive determination that the tribe is entitled to federal recognition.

Continuity of tribal leadership

Section 6 is amended to provide for the interim administration of the settlement lands until a formal tribal governing body is recognized by the Secretary.

SECTION-BY-SECTION ANALYSIS OF S. 1452 AS AMENDED

Section 1. Title

Section 2. Findings and Policy—claims by Indians to public lands in Gay Head has caused economic hardship for the town residents by clouding titles, including titles to lands not included in the lawsuit; Congress desires to remove clouded titles; the parties have reached a settlement and the town has agreed to contribute 50 percent of the land involved in the settlement.

Section 3. (a) Establishes the Gay Head Indian Claims Settlement Fund.

(b) Authorizes $1.5 million appropriation for the fund.

(c) Requires Massachusetts to contribute $1.5 million to the fund.

Section 4. (a) Validates all land transactions made prior to date of enactment of this act that involve the Gay Head Indian tribe or the tribe and the town of Gay Head and provides that such transactions shall be deemed to have been made with the consent of the U.S. Congress.

(b) Extinguishes aboriginal title of the Gay Head Indians.

(c) Extinguishes all other Gay Head tribal land claims, including damages and trespass, against the United States or any State or political subdivision thereof.

(d) Protects claims of individual Indians which are pursued under laws of general applicability.

Section 5. (a) Requires that before section 6 can become effective, the Secretary must publish notice in the Federal Register that: the state of Massachusetts has authorized the town of Gay Head to convey the public settlement and the Cook lands to the Secretary in trust for the tribe; the settlement lands are exempt from state taxation; the tribe can regulate hunting by Indians on such lands by means other than firearms or crossbows; and the town of Gay Head has authorized the conveyance of the public settlement and the Cook lands to the Secretary in trust for the tribe.

(b) Authorizes the Secretary to rely on opinion furnished by the Attorney General of Massachusetts in determining whether the requirements of (a) have been met.

Section 6. (a) Provides that, within 60 days following the publication required by section 5, the Secretary shall negotiate for the purchase of the private settlement lands on behalf of the tribe and conduct a survey to determine precise acreage and boundaries.

(b) Requires that, if an agreement cannot be reached on fair market value within 90 days, binding arbitration shall be conduct-

ed in accordance with the rules of the American Arbitration Association.

(c) Requires that, within 60 days after a purchase agreement has been reached under (a) or (b), the Secretary shall acquire all rights and interest to such land.

(d) Provides that after acquisition, the Secretary shall transfer all rights and interest to the Tribe and that an interim entity will be appointed to administer the lands until such time as a tribal governing body is recognized.

(e) Authorizes the Secretary to undertake condemnation proceedings as may be necessary.

Section 7. (a) Provides that the tribe may exercise jurisdiction over settlement lands only to the extent provided for in this Act, the State Act or the settlement agreement.

(b)(1) Prohibits alienation of settlement land (except Cook land and other acreage designated in settlement agreement) to any person other than a federally recognized tribe or organization in Gay Head.

(2) Any effort to otherwise dispose of settlement land shall have no effect in law.

(3) Subsequent holders of land bound by same conditions as tribal council with respect to alienation and use.

(c)(1) Reserves authority for liens on lands as provided in the State act.

(2) Authorizes the Secretary to approve leases under 25 U.S.C. 415.

(3) Reserves legal capacity of Tribe to grant land use rights to members; to convey easements; and to convey certain acreage designated in the settlement agreement.

Section 8. Definitions.

Section 9. Except as provided in this Act or the State Act, the settlements lands shall be subject to state jurisdiction.

Section 10. Bars challenges to constitutionality of this act after 60 days following publication of notice in section 5 and vests jurisdiction over such challenges i . U.S. District Court.

Section 11. Except for section 4, this Act takes effect on positive finding on recognition petition; section 4 is effective on transfer of title to lands and certification by the state. Limits membership in the tribe to descendants of Gay Head Indians.

COST AND BUDGETARY CONSIDERATION

The cost estimated for S. 1452 as provided by the Congressional Budget Office is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1452, the Gay Head Wampanoag Indian Claims Settle-

ment Act of 1985, as amended and ordered reported by the Senate Select Committee on Indian Affairs, October 1, 1986.

We estimate that enactment of this bill would result in costs to the federal government of up to $1.5 million. S. 1452 would establish the Gay Head Indian Claims Settlement Fund within the U.S. Treasury and would authorize the appropriation of $1.5 million for the fund. An additional $1.5 million would be paid into the fund by the Commonwealth of Massachusetts. The monies in the fund would be used to acquire certain designated private lands in the town of Gay Head, Massachusetts. The costs of acquisition would be split evenly between the federal and state governments. The Secretary of the Interior would hold the acquired private lands, as well as public lands transferred by the town to the Secretary, in trust for the Gay Head Indians.

The Commonwealth of Massachusetts has agreed to participate in the arrangements authorized by S. 1452 at an estimated cost of up to $1.5 million. This amount has already been appropriated by the Commonwealth to pay its share of the costs of acquiring land under the bill.

On September 19, 1986, CBO prepared a cost estimate for H.R. 2868, as amended and ordered reported by the House Committee on Interiror and Insular Affairs. The estimated costs of H.R. 2868 and S. 1452 are the same.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill. The Committee believes that S. 1452 will have minimal regulatory and paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received the following letter from the U.S. Department of the Interior giving the Administration's views of S. 1452:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 17, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your September 4, 1986, letter advising the Department of the scheduled markup of S. 1452 (the "Gay Head Wampanoag Indian Claims Settlement Act of 1985") and further inquiring whether our views on S. 1452 would be altered by adoption of the amendments referenced in your

letter. A copy of these amendments is attached to this report as an enclosure.

Your proposed amendments numbered 1, 4, and 5 would (1) condition the effectiveness of the bill on a determination by this Department that the "Gay Head Wampanoag Tribe" should be acknowledged as an Indian tribe under our regulations in 25 C.F.R. Part 83; and (2) reduce the authorized Federal appropriation from $3 million to $1.5 million because of the agreement by the State of Massachusetts to increase its contribution to the settlement by $1.5 million in cash. Your other two proposed amendments are desirable technical amendments to S. 1452.

S. 1452 was the subject of our February 5, 1986, and August 28, 1986, reports to your Committee. Our February 5 report included the following:

"We oppose enactment of S. 1452 because it does not meet the criteria for the settlement of Eastern land claims as set forth in the President's veto message on S. 366, 98th Congress. . . . These criteria are (1) completion by this Department of its administrative procedure for determining whether Federal recognition of the tribe is appropriate; (2) verification of the claim; and (3) payment by the State of Massachusetts of at least one-half of the settlement costs."

While we feel the proposed amendments are responsive to two of these criteria, we nevertheless would continue to oppose a Federal monetary contribution to the settlement because, as explained in our February 5 report, the Wampanoag group's claim would be of questionable validity even if the group were recognized as an Indian tribe.

Assuming recognition was granted, the claim would be based on the theory the United States wronged the tribe by failing to prevent the State of Massachusetts from distributing "tribal" lands in fee to the Town of Gay Head and individual Wampanoag Indians, some of whom subsequently sold their parcels. This argument would likely turn on whether lands conveyed at the State were in fact tribally held. As stated in our August 28 report, we are aware of no transaction by which any tribe reacquired these lands after their purchase in the early 1700's by the group called the "Company," and subsequent abandonment.

Moreover, even if the land was tribally held, it can be argued that little real injury has occurred, especially with respect to the lands transferred to the town. In its acknowledgement petition, the Wampanoag group argues that it and the town are the same entity. Since the town lands are still owned by the town/tribe, the claim to these lands could be extinguished merely by changing the paper title to the land from the "tribe." The transfer of the town lands to the Wampanoag group is controversial only from a land-use perspective. Disposition of these lands is an issue that could be resolved by the State without congressional attention.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that there are no changes in existing law made by S. 1452.

○

Calendar No. 1087

99TH CONGRESS
2d Session

SENATE

REPORT
99-531

SETTLING CERTAIN CLAIMS ARISING OUT OF ACTIVITIES ON THE PINE RIDGE INDIAN RESERVATION

OCTOBER 6, 1986.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2260]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2260) to settle certain claims arising out of activities on the Pine Ridge Indian Reservation, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 2260 is to settle certain claims arising out of activities on the Pine Ridge Indian Reservation associated with the 1973 occupation of Wounded Knee, South Dakota.

SUMMARY OF EVENTS AND LEGAL PROCEEDINGS

From February 27, 1973, until May 8, 1973, the hamlet of Wounded Knee, South Dakota, located on the Pine Ridge Indian Reservation of the Oglala Sioux Tribe was occupied by members of the American Indian Movement surrounded by Federal forces seeking to contain the occupation. Ingress and egress from the town was limited by Federal forces surrounding the occupied area, and as the occupation continued, residents of the town were encouraged by Federal officers to leave their homes and commerical businesses and to move out of the occupied area until the occupation could be brought to a peaceful conclusion.

By resolution of the Senate on February 2, 1976 (S. Res. 378, 94th Cong., 2d Sess.), claims for damages to and loss of property and personal injuries arising from the occupation of Wounded Knee, South

91-010 O

S413-14

Dakota between February 27, 1973, and May 8, 1973, were referred to the United States Court of Claims. Prior to the referral of the cases to the Chief Commissioner of the United States Court of Claims, some effort was made to identify, by name and address, potential "innocent victim" claimants in order that they might be served with notice, as required by the procedural rules established for Congressional Reference cases, advising them that a claim could only be asserted by filing a petition with the clerk of the court in accordance with procedural rules. It became apparent in late 1976 that many potential claimants had not filed petitions with the court, and by order issued on October 12, 1977, the deadline for the filing of petitions was extended to October 31, 1977. In all, 122 claimants filed petitions, but during the course of proceedings, seven (7) plaintiffs were dismissed with prejudice. Of the 115 petitions remaining, 99 petitions represented claims filed by individuals, all of whom with few exceptions, were Indian people residing on the Pine Ridge Indian Reservation in February, 1973. Twelve petitions were filed by corporations or companies. Single petitions were filed by a local community, a church, a Housing Authority, and an Indian tribe.

The plaintiffs, certain residents of the Pine Ridge Indian Reservation in South Dakota, disavowed any claim based on a legal right of recovery, and predicated their right to recover damages on facts offered in support of a claim for purely equitable relief. The plaintiffs contended that the United States' actions and/or failure to act relative to the occupation of Wounded Knee were causally and primarily resonsible for the damages and losses suffered by them as a result of the occupation. The plaintiffs' claim for equitable relief against the United States is premised upon the following claims:

(1) The government mishandled the Washington, D.C. takeover of the Bureau of Indian Affairs in November, 1972, the effect of which provided the impetus for the subsequent occupation of Wounded Knee.

(2) The government failed to take steps to prevent the occupation at Wounded Knee in spite of advance warnings of the Indian build-up in South Dakota, that Indian demonstrations would resort to violence, and that the occupation target of the Indians was Wounded Knee.

(3) The government decision to establish and maintain roadblocks on all roads running to Wounded Knee led to an unwarranted escalation and prolongation of the demonstrations, prevented residents from returning to Wounded Knee to protect their homes and property and was generally so inexpertly implemented that throughout the occupation the occupying forces were continously reinforced, reprovisioned and rearmed inspite of the roadblocks. Thus, the government's establishment of roadblocks and the manner in which they were maintained and operated was responsible in no small measure for the damages and losses suffered by plaintiffs.

(4) The improper handling of the Wounded Knee occupation by federal officers allowed the occupation to continue for 71 days when proper handling would have effected a much earlier termination of the occupation.

(5) There was a failure to achieve coordination among the various law enforcement agencies at Wounded Knee thereby prolonging the occupation.

(6) The presence of the federal forces contributed to a breakdown in routine law enforcement functions on the Pine Ridge Reservation.

(7) The constant shift in the leadership of the government forces at Wounded Knee prolonged the occupation by hindering the development of a cohesive strategy for resolving the occupation.

(8) United States Marshalls destroyed evidence which could have led to the recovery of some personal property by bulldozing Indian bunkers, after the occupiers were dispossessed, and before the evidence in them was removed.

(9) The United States must be held to a higher standard of care and responsibiity in its dealings with the Indians due to the unique trust relationship between the Indian tribes and the federal government and the government abused this trust in its handling of the occupation.

(10) The government must be held to have assumed the obligations of protecting life and property within Wounded Knee during the occupation and failed to do so.

(11) United States Marshalls wrongfully destroyed personal property belonging to the plaintiffs.

The Claims Court's disposition of plaintiffs' claims, reduced by the court to three basic contentions, is outlined below:

(1) The court rejects plaintiffs' claims that the government mishandled the November, 1972, takeover of the Bureau of Indian Affairs (BIA) building in Washington, D.C. by granting limited amnesty to those occupying the building and providing travel money to the occupiers to return to their homes, thereby setting a precedent that led to the takeover of Wounded Knee in February, 1973. The court finds that on the record before the court, every aspect of the government's handing of the Washington, D.C. BIA building takeover was reasonable and appropriate under the circumstances. The court finds that there is no evidence that the government's use of a limited amnesty and payment of travel money to end the BIA takeover had any undesirable precedential effect or in any way caused the takeover of Wounded Knee. The court finds that its rejection of this contention is supported by expert testimony in the record.

(2) The court also rejects plaintiffs' claims that during the period from November 8, 1972, (the date of the dispossession of the Washington, D.C. BIA building) and February 27, 1973, (the night the Wounded Knee takeover began) the government could have and should have acted to prevent members of the American Indian Movement from taking over the hamlet of Wounded Knee. The court finds that the government's efforts between November 8, 1972, and February 27, 1973, in monitoring and gathering intelligence on and protecting against militant Indian activity were, on the record before the court, reasonable, professional, complete, and within the constraints of the Constitution, pursued with due diligence. The court finds

that there is no evidence that government officials knew ahead of time that Wounded Knee was the target of the American Indian Movement. The court also finds that there is no evidence that the government could have or should have done more to protect against such a takeover, giving due regard to the principles of the United States' democratic society.

(3) The court also rejects plaintiffs' contention that the government's failure to use force to end the occupation of Wounded Knee earlier, and thereafter, its handling of negotiations and related operations at Wounded Knee, prolonged the occupation and thereby caused property damage. The court finds that on the record before the court, the government's decision not to use force but rather to negotiate the dispossession of Wounded Knee was a reasonable one under the circumstances. The court finds that every aspect of the government's implementation of its negotiating stance and related operations was accomplished in a reasonable and professional manner. The court also finds that expert testimony in the record further supports rejection of plaintiffs' contention.

The court concludes that its findings remove the predicates necessary for the plaintiffs to have any basis for equitable claims against the United States. Recognizing that the plaintiffs did incur property damages and losses as a result of the occupation of Wounded Knee by militant forces of the American Indian Movement, the court still finds that the United States should not be deemed legally and/or equitably liable for those damages since the reaction and response of the government to the occupation was, in the court's view, prompt, reasonable and honorable. The court notes that expert testimony indicated that the government's conduct in terminating the Wounded Knee occupation comported most favorably with present-day accepted and recognized standards, policies, practices and procedures utilized in handling hostage and barricade situations. Finally, the court concludes that any monetary award to plaintiffs for damages arising out of the Wounded Knee occupation would be a gratuity.

Given the findings of the Court of Claims, legislatively authorized equitable relief for those who suffered damages and losses arising out of the occupation is the only means of assuring that the innocent victims of Wounded Knee are compensated for their losses.

BACKGROUND

The Sioux Treaty of 1868 marked the conclusion of wars between the United States and the Sioux, Cheyenne, and Arapaho tribes. Under the terms of the Treaty and the provisions of the Dawes Allotment Act of 1887, 25 U.S.C. § 331, and the Indian Reorganization Act of 1934, 25 U.S.C. § 461, the present Pine Ridge Indian Reservation was established. The Pine Ridge Indian Reservation is bordered by the states of South Dakota and Nebraska and by the Rosebud Sioux Indian Reservation. The Reservation consists of 1,662,437 acres of which 402,889 acres are held in trust for the tribe by the United States; 1,168,240 acres represent tribal allotments held in trust; and 91,208 acres that are owned by the Federal government.

Of the total area, four percent of the land is farmed, two percent is badlands, and the remaining 94 percent is used for production of livestock. As of July, 1973, there were approximately 11,478 tribal people living on or near the reservation. The principal city, town or hamlets on the Reservation include Pine Ridge, the seat of the tribal government, Manderson, Porcupine, Kyle, Wanblee, Martin and Wounded Knee. In 1973, the hamlet of Wounded Knee consisted of approximately 92 families totalling 374 persons. The principal buildings in Wounded Knee at the time of its occupation by members of the American Indian Movement were a trading post, museum, and outbuildings; homes owned by the Gildersleeve and Czywczynski families; an Episcopal church, a Roman Catholic church, and a Church of God church; a cluster of housing project consisting of approximately 20 detached houses; and scattered houses throughout the area.

The Oglala Sioux Tribe of the Pine Ridge Reservation is governed by a constitution and by-laws, approved by referendum vote of the Oglala Sioux electorate on December 14, 1935, in accordance with section 16 of the Indian Reorganization Act of 1934. In 1973, the tribal government consisted of the elected ten-menber Oglala Sioux Council and an elected tribal chairman.

The events which give rise to equitable relief that is authorized in S. 2260 occurred between February 27, 1973 and May 8, 1973, when members of the American Indian Movement occupied thehamlet of Wounded Knee. The events leading up to the occupation of Wounded Knee are set forth in detail in the findings of fact by the U.S. Court of Claims in *The Innocent Victims of the Occupation of Wounded Knee, South Dakota* v. *United States,* Cong. Ref. 4–76. When, approximately two weeks before the occupation occurred, caravans of out-of-state cars began coming into Rapid City, South Dakota and onto the Pine Ridge Reservation, and in response to rumors of possible violence, the Bureau of Indian Affairs, the agency responsible for local law enforcement, informed the United States Marshall Service that Bureau of Indian Affairs (BIA) personnel had neither the experience or expertise to assess the situation and current developments in the Pine Ridge area, and urgently requested that the United States Marshal Services (USMS) send two or three of its best men to Pine Ridge to assess the situation and survey the facility and manpower resources. The BIA had previously brought in about 20 Indian law enforcement officers to reinforce the 13 already on duty. The Marshall Service was requested to advise the BIA whether additional resources were needed. On the evening of February 12, 1973, the United States Marshall Service was directed by the Deputy Attorney General's office to deploy SOG personnel in support of the BIA building on the Pine Ridge Reservation. Sixty-eight deputies in the SOG were activated and ordered to the Pine Ridge Reservation. The SOG force was a group of 100 selected volunteer United States Marshalls, whose activities involved special assignments throughout the United States. The SOG force was trained in the art of confrontation management and were comparable to a SWAT team. On February 27, 1973, at about 1:00 p.m., approximately 200 members and supporters of the American Indian Movement (AIM) assembled in Calico Hall on the Pine Ridge Reservation. About 50 of these persons were reportedly

armed with rifles, shotguns, pistols, clubs, and knives. During the afternoon, about 200 members of this group left Calico Hall in a caravan of cars headed south on the Reservation. The caravan went through Pine Ridge and reportedly was on its way north to Porcupine. This route would take the caravan through the hamlet of Wounded Knee. The caravan was under surveillance by FBI special agents and its progress on the Reservation was noted by the USMS. The intelligence that the FBI was able to obtain as to the substance of the meetings at Calico Hall and the demeanor of the caravan as it progressed through the Reservation conveyed an impression of a peaceful undertaking.

Some time between 7:00 and 8:00 p.m. on February 27, 1973, an estimated 200 armed AIM members and supporters arrived in approximately 60 automobiles at the Wounded Knee Trading Post and Museum in Wounded Knee, South Dakota. Members of the group were reported to have shot out the dusk-to-dawn lights which illuminated the area of the Trading Post and Museum and the home of Clyde and Agnes Gildersleeve that was directly opposite and across the road from the Trading Post. AIM personnel also allegedly fired shots at BIA police who tried to enter Wounded Knee to investigate the disturbance, and were reported to have fired at a fire truck which was responding to a fire in Wounded Knee.

During the first several days of the occupation, a total of nine roadblocks were established and reinforced with United States Marshals and some military equipment. FBI agents were instructed to stop all cars exiting from the Wounded Knee area and unless the occupants could explain why they were coming out of Wounded Knee at that time, such as showing they were residents fleeing for their lives or were tourists who might have been caught up in the middle of the situation, the occupants would be subject to arrest.

Following the seizure and occupation of Wounded Knee, the occupiers took 11 hostages. These individuals were living in the immediate area of the Trading Post store at the time of the initial takeover of Wounded Knee and after their hostage status was established, were able to witness the looting of the store by many people.

On March 1, 1973, United States Senators Abourezk and McGovern arrived with aides at the BIA building in Pine Ridge. After consultations, the Senators and law enforcement officials agreed that no meeting would be held with the occupiers until the hostages were released. The Senators later met with the AIM leaders to hear their grievances and respond to their demands.

During the first few days of the takeover, BIA and FBI units reported being fired upon by occupants of Wounded Knee. Also during this period, the Indians inside Wounded Knee were observed digging trenches and bunkers near the Catholic Church in Wounded Knee. In order to facilitate the acquisition of military equipment for use by law enforcement officials at Wounded Knee, two Department of Defense observers were assigned to Wounded Knee. The most notable military equipment acquired and used at Wounded Knee were 15 armed personnel carriers and 100 M-16 rifles which were on site by March 4, 1973.

On March 3, 1973, attorneys from the Native American Rights Fund arrived and met with AIM leaders. The lawyers reported that no one was being held hostage, and that it appeared that AIM might be willing to end the matter if only the AIM leaders of the takeover were charged. By March 4, 1973, the AIM occupiers were seen using bulldozers and backhoes to dig new fortifications and to strengthen existing ones. AIM occupiers continued to fire on federal officials. In light of the continuing gunfire on the government's perimeter positions, more armored personnel carriers were requested on March 4, 1973, in order to provide effective protection for federal personnel manning the roadblocks.

Negotiation efforts were ongoing through the occupation period, with various Federal officials coming into the area to meet with the occupiers. Because of the government's use of special forces and sophisticated military weaponry, one of the victims' claims in the Claims Court was that the government escalated the takeover into a paramilitary action. The plaintiffs in the Claims Court also contended that government roadblocks generally prevented Wounded Knee residents who were not inside the perimeter from returning to their homes, and that residents who left Wounded Knee after March 12, 1973, were not allowed to return through the roadblocks. As a result of the government access policy preventing residents from returning to their homes, the victims contend that they suffered property damage and theft.

The Court noted that a number of the displaced residents of Wounded Knee desired to return to their homes during the occupation and generally were prevented from doing so by the federal roadblock and access policy. Some of these residents wanted to enter the perimeter area to protect their homes and property from AIM occupiers. Others had family members who had remained inside Wounded Knee and there was concern for their safety. Still others wished to return to their homes because they either did not have friends or relatives with whom they could stay or they simply did not desire to stay with others or in the temporary accommodations set up in public buildings on the Reservation.

The detailed summary of the events which transpired between the February 27, 1973 takeover of Wounded Knee and the May 8, 1973 surrender of the occupied area are set forth in over 250 pages of Findings of Fact by the Court of Claims. Following the May 8th dispossession, concerned that the AIM bunkers might be dangerous, the government brought bulldozers into the formerly occupied area and bulldozed trenches and fortifications, allegedly destroying much private property and possible probative evidence in the process. Personal property was also alleged to have been confiscated as souvenirs at this time by those responsible for "sweeping" the area to make sure that it was safe.

In the Court of Claims the plaintiffs asserted a claim for equitable relief for the damages they suffered based on the government's access to information that should have led the government to know that the Wounded Knee takeover was imminent, and that the government should have acted to prevent AIM from taking over the hamlet of Wounded Knee. The plaintiffs also contended that the actual occupation of Wounded Knee lasted too long, and that the government's failure to use force to end the occupation early and

related operations at Wounded Knee were to blame for prolonging the occupation and thereby causing the property damage for which the plaintiffs claim entitlement.

The Court of Claims concluded that while it was true that the plaintiffs did incur property damages and losses as a result of the occupation of Wounded Knee by militant forces of AIM, the United States should not be deemed legally and/or equitably liable for the damages since the government's reaction and response to the occupation was prompt, reasonable and honorable.

OCCUPATION OF WOUNDED KNEE [1]

On February 27, 1973, between 7:00 and 8:00 p.m. approximately 200 armed members and supporters of American Indian Movement (AIM) arrived in approximately 60 automobiles at the Wounded Knee Trading Post and Museum in the hamlet of Wounded Knee, South Dakota. AIM militants entered the rear of the Trading Post and opened the front door from the inside, permitting AIM members to enter. Two armed guards were placed at the entrance to the Trading Post as soon as entrance was made. AIM occupiers then proceeded to enter the Trading Post and exit with armloads of merchandise, loading it into vans which were parked outside. This merchandise consisted of guns, food, Indian artifacts, and pottery. After burglarizing the Trading Post and Museum, AIM militants proceeded to vandalize and destroy homes and property in the area, and rounded up eleven residents at gunpoint and declared them to be "political prisoners and hostages."

Because of insufficient manpower, the only option recognized as available to government officials under the circumstances was a stop-gap measure—the establishment of roadblocks on the four primary roads in and out of Wounded Knee. The original purpose behind establishing the roadblocks was to prevent the militants from leaving Wounded Knee. However, it became apparent that it would be impossible to seal the perimeter since the terrain would allow ample opportunity and cover to anyone wishing to slip in or out. Rather, the roadblocks quickly became a focal point for provocation between government officials and AIM forces, and in many cases, prevented the residents of Wounded Knee from returning to their homes, leaving their property unprotected. Further, the decision of government officials to adopt a wait-and-see posture and maintain the roadblocks, rather than affirmatively act to evict and arrest the militants during the early days of the occupation, allowed the militants to organize their defenses, to "dig-in" and to fortify their defensive positions making forceable eviction a progressively less viable option. Thus, positions on both sides hardened, and the

[1] This synopsis was put together from pleadings and documents presented in the United States Court of Claims case, Congressional Reference 4-76.

confrontation at Wounded Knee which had begun as a demonstration developed into a seige.

On February 27, 1973, Claimant 95, Robbins & Stearns Construction Co. was in the process of building 235 units of housing in the Wounded Knee area. In connection with its building operation, R & S maintained construction equipment and supplies on a construction site approximately one mile from the Wounded Knee Trading Post. In addition to its own equipment and supplies, that of certain subcontractors were also maintained on the site. The equipment and supplies remained on the site during nonworking hours. At the time that Wounded Knee was seized, R & S had on the Wounded Knee housing site equipment including a forklift, a bulldozer, a front end loader, and numerous smaller hand tools. Additionally, various subcontractors had stored a tractor and a backhoe on that site. R & S also had on Wounded Knee housing site building supplies including: sufficient lumber and plywood to frame 25 houses; exterior siding and sheeting, wall sheeting, roof sheeting, interior partition material, insulation, and shingles; and masonry block, masonry mortar material, sand and bags of masonry cement sufficient to complete 15 house foundations.

R & S maintained a bunk house and supervisor at the Wounded Knee housing site, R & S personnel were living on that site at all times, and R & S maintained its equipment and building supplies on the site. When on the morning of February 28, 1973, no additional workmen had arrived and the R & S employees on site were unable to make phone contact with R & S managing personnel, they determined that they would leave the Wounded Knee site. Within two to three minutes after leaving the housing site, approximately one mile from that site, they were stopped at a roadblock consisting of two cars parked adjacent to the road. From the time that these Wounded Knee site employees exited through that roadblock on the morning of February 28, R & S personnel were consistently denied entrance to the occupied area despite repeated attempts and requests to enter to recover the equipment and supplies, thereby affording the militants free access to that material for use in building bunkers and fortifying their defensive positions. The resulted in R & S Construction Company's loss of equipment and materials.

R & S Construction Company was not alone in its denial of access to Wounded Knee. While the government policy with respect to allowing residents of Wounded Knee access to the occupied area changed from time to time, for the most part, residents and property owners were denied all access to the occupied area. Many were consistently denied access despite repeated requests to enter the occupied area to remove or protect their property. Government officials made it clear to local residents that they were to stay out of the area and were not to attempt to cross the road-

blocks. Failure to follow this policy would result in their arrest.

During the occupation, Claimant 83, James and Jeanette Czywczynski, owners of the Wounded Knee Trading Post and Museum, Claimant 98, Sioux, Inc., made at least six requests to gain assistance in saving property located within the occupied area. In response, they were denied assistance and advised that if they attempted to cross the roadblocks they would be arrested.

The roadblocks were removed only once on March 10th, when federal officials conlcuded that it might prove wise to withdraw the roadblocks since they seemed to serve as a symbolic center for AIM militants without being effective in stopping movement in and out of Wounded Knee. Therefore, on the 10th, at approximately 2:00 p.m., the federal forces including the Armed Personnel Carriers (APC) were withdrawn from the area of Wounded Knee. Residents of Wounded Knee were able to travel freely to and from their homes.

However, the roadblocks were reimposed on March 12th at approximately noon. This was done without forewarning the residents of Wounded Knee, so that some were caught out of Wounded Knee away from their homes and families. The federal officials stated that the reimposition was necessary because the Indians holding Wounded Knee had taken advantage of the free access to fortify their positions with more weapons and ammunition.

From the beginning of the occupation, the federal officials continually attempted to negotiate a resolution to end the occupation. There were negotiating sessions held for days and involving AIM leaders, federal officials, church officials, traditional headsmen of the Sioux, Congressional leaders and other nationally known activists. However, as the days turned into weeks and the weeks to months, it was the residents of Wounded Knee who suffered the most.

The following paragraphs reflect the experiences of various residents of Wounded Knee in connection with their inability to gain access to the occupied area and what occurred to their families during the occupation. Each is taken from statements made by the residents either during or subsequent to the occupation.

> I live in Wounded Knee and I have not been able to go home for ten or more days. This is due to the roadblocks and such. We live and work in Wounded Knee, we would like to be able to come and go as we please. Also, all of our personal property that we have not been able to check on or even if we have anything left. We have been going from place to place here in Pine Ridge and it is hard especially on our children. (Claimant 18, Patrick Pumpkin Seed—March 22, 1973).

> My home is in Wounded Knee, all I own is there and some things cannot be replaced that I value and that is why I would like to go home.
>
> Where I am at, is not like my own home. No privacy, lack of all my needs for my family. No place for my other children to come to. (Claimant 21, Lillian Boltz Sitting Eagle—March 23, 1973).

That, Claimant 20, Eva Red Star, and her family continued to reside in Wounded Knee at their residence until March, when they needed to obtain groceries for an upcoming blizzard.

She and her husband, Paul Red Star, left with Patricia Red Star, their granddaughter. They purchased their groceries in Whiteclay, Nebraska and then attempted to reenter Wounded Knee.

They attempted to enter through the roadblock on Highway 18 and were denied entry. They then traveled to the Manderson roadblock, Porcupine roadblock and finally to the Denby roadblock. At each location they were refused entry into Wounded Knee.

They then returned to Nebraska, Rushville and then Gordon, attempting to find a motel room. They were unsuccessful and then attempted in the storm to go back to Wounded Knee. The car slid in the ditch and they were forced to spend the night beside the road.

They proceeded to Pine Ridge the next morning and went to the Holy Cross Guild Hall where they stayed for the rest of the occupation.

She tried five times to return to Wounded Knee and each time was informed that even though she was a resident she could not return.

The sixth time she attempted to enter was after Easter, when Clyde Gildersleeve told her that a house had been burned. She went to the Manderson roadblock and disregarding officers' warnings, she went through the roadblocks and into Wounded Knee to her home. At that point she noticed that cars were burned, cow hides and horse hides were in her yard as well as having her cat and chickens dead. The house were also ransacked.

She left after viewing the home and did not return again until May, after the occupation. At that point the condition of her home had worsened. (Claimant 20, Eva Red Star—February 4, 1980).

On the evening of the takeover, Nettie Two Two, Elmer Two Two and Elizabeth Breast, Claimants 24 and Claimant 23, were required to take a relative back to Manderson. When they left Manderson to return to Wounded Knee, there was a roadblock established on the Manderson Road. They were unable to gain entry to Wounded Knee that evening.

The next day they tried to enter Wounded Knee by the Denby Road roadblock. The law enforcement officials indicated they could not enter Wounded Knee.

The following day, they tried the Porcupine Road roadblock and were again turned away.

On March 12th, they were allowed entrance through the Porcupine Road roadblock and instructed to come out the same night.

Instead they stayed in over night and left on March 13th, going out by the Highway 18 roadblock. At that time, they left their possessions because it was their belief that the situation was calmer and that their possessions were not in danger.

Prior to being allowed to enter on March 12th, they had tried repeatedly the Manderson, Porcupine and Denby roadblocks. Each time even though they had proper identification, the law enforcement officers indicated that they could not go into their home.

They then went to Eli, Nebraska and remained there until the end of the occupation. (Claimants 24, Nettie Two Two, Elmer Two Two and Claimant 23, Elizabeth Breast—January 24, 1980).

The morning after the takeover, Warfield Moose, Claimant 17, proceeded to the roadblock on Denby Road where he was searched by approximately fifteen U.S. Marshals.

He was refused entry to Wounded Knee from the day after the occupation began until the roadblocks were down. While they were down, he was able to check on his home.

Only once after March 12th was he allowed to enter Wounded Knee. On that occasion, the federal officers agreed to allow him, his wife and his father to go into Wounded Knee for 90 minutes.

He went into Wounded Knee and to his home on this occasion and was able to see that only food stuffs had been taken from his home.

That was the only time after March 12th that he was able to gain entry into Wounded Knee, though he made repeated requests at all of the roadblocks due to the rumors that his home had been ransacked.

When the occupation was over and he was allowed to return to his home, it was ransacked and unfit to live in.

After dispossession was completed on May 8, 1973, residents forced from their homes were permitted to enter the area. (Claimant 17, Warfield Moose—January 17, 1980).

On May 7, 1973, the occupation of Wounded Knee ended with a negotiated agreement reached between the leaders of AIM and representatives of the federal government. The dispossession of Wounded Knee was achieved on May 8, 1973. One hundred and twenty-nine persons came out of Wounded Knee. Only thirty-three were residents of Wounded Knee. These residents were provided with food and drink furnished by the American Red Cross. However, other residents were still denied entry to Wounded Knee by the four roadblocks maintained by the U.S. Marshals Service. On May 9, 1973, the remaining residents were allowed to return to their Community as it had been left

behind. The Trading Post, which had burned to the ground on April 29th, was a mass of wreckage. Several homes were burned out shells. Garbage and trash covered the area. It was then up to the residents of Wounded Knee to try and restore their lives, homes and community to a liveable condition.

LEGISLATIVE HISTORY

S. 2260 was introduced by Senator Abdnor on March 27, 1986 and was referred to the Select Committee on Indian Affairs. A hearing on S. 2260 was held on May 7, 1986.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on May 14, 1986, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2260, as amended.

COMMITTEE AMENDMENTS

(1) On page 3, line 7, delete claim number 15 for claimants Frank and Gladys Locke in the amount of $12,021.56.

(2) On page 7, line 14, insert the following: "(68) $600 to Faye Yellow Bird Steele (claimant No. 73),".

(3) On page 11, line 12, insert the following:

(2) Notwithstanding any other provision of law, no amount of any payment made to a person under this Act shall be included in the income of such person for purposes of any Federal, State, or local income tax. Notwithstanding any other provision of law, payments made to a person under this Act may not be considered as income or resources or otherwise used as the basis for denying or reducing—

(A) any financial assistance or other benefit under the Social Security Act—

(i) to which such person, or the household of such person, is otherwise entitled, or

(ii) for which such person, or the household of such person, is otherwise eligible, or

(B) any other financial assistance or benefit—

(i) to which such person, or the household of such person, is otherwise entitled, or

(ii) for which such person, or the household of such person, is otherwise eligible,

under any program part or all of the funding for which is provided by the Federal Government.

COST AND BUDGETARY CONSIDERATIONS

The Cost estimate for S. 2260, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 27, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We have reviewed S. 2260, a bill to settle certain claims arising out of activities on the Pine Ridge Indian Reservation, as amended and ordered reported by the Senate Select Committee on Indian Affairs on May 14, 1986. We estimate that enactment of this bill would result in outlays by the federal government of about $1.6 million in fiscal year 1987.

This legislation authorizes and directs the Secretary of the Treasury to pay certain claims resulting from activities on the Pine Ridge Indian Reservation. The Secretary is also authorized and directed to pay compensation to the Dakota Plains Legal Services for services rendered. The payments are specified in the bill and total about $1.6 million. This is direct spending authority and would not require subsequent appropriation action.

Enactment of this bill would result in no additional cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2260, as amended, will have no impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The committee received a legislative report on S. 2260 from the Department of the Interior, as set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 4, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on s. 2260, a bill "To settle certain claims arising out of activities on the Pine Ridge Indian Reservation."

We oppose enactment of S. 2260.

S. 2260 is essentially a private relief bill. The bill would ocmpensate 113 individuals and businesses (who were plaintiffs in a prior legal action) for amounts ranging from $731 to $490,934 each for personal injuries or damages to their property during the occupation of Wounded Knee, South Dakota, which occurred between Feb-

ruary 27, 1973, and May 8, 1973. S. 2260 would also provide $26,486.44 to the Dakota Plains Legal Services, formerly South Dakota Legal Services Corporation, for services provided.

The claimants have disavowed any claim based on a legal right of recovery and instead attempted to build a case in support of a claim for purely equitable relief. The time periods involved in their claims began with the incidents leading up to and including the November 4, 1972, takeover of the Bureau of Indian Affairs (BIA) building in Washington, DC., and continued through the occupation of Wounded Knee, South Dakota, in early 1973. The claimants have contended that the United States actions, or failures to act, were responsible for the damages and losses suffered by them as a result of the Wounded Knee occupation.

The United States Court of Claims completed a thorough investigation and analysis of the claims made by the claimants. The Court of Claims report entitled "The Innocent Victims of the Occupation of Wounded Knee, South Dakota v. The United States (Cong. Ref. 4-76), Findings of Fact and Recommended Conclusions to Accompany the Opinion of the Trial Commission filed June 10, 1981" concluded:

> The above ultimate conclusions remove the predicates necessary for plaintiffs to have any basis for equitable claims against the United States. While it is true that plaintiffs did incur property damages and losses as a result of the occupation of Wounded Knee by militant forces of AIM [American Indian Movement], the United States should not be deemed legally and/or equitably liable for said damages since its reaction and response to the occupation was prompt, reasonable and honorable. Expert testimony indicated that the government's conduct in terminating the Wounded Knee occupation comported most favorably with present-day accepted and recognized standards, policies, practices and procedures utilized in handling hostage and barricade situations. Under such circumstances, any monetary award to plaintiffs for damages arising out of the Wounded Knee occupation would be a gratuity.

Although the Court of Claims has determined that the monetary damages suffered by the claimants amounted to about $1,600,000, the findings referenced above indicate that compensation from the Federal Government is not appropriate in this case.

The Office of Management and Budget has advised that there is no objection to the presentation of this report form the standpoint of the Administration's program.

Sincerely,

Ross O. Swimmer.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that S. 2260 effects no change in existing law.

○